

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Richard J. Klein,)
Petitioner,) Case No. 1:01-CV-794
vs.)
Harold Carter,)
Respondent.)

Order Adopting Report and Recommendation

This matter is before the Court upon Petitioner's objections to the May 20, 2005, Report and Recommendation of United States Magistrate Judge Timothy S. Black. The Magistrate Judge recommended that Petitioner's amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 53) be denied with prejudice.

Petitioner has asserted various objections, all of which the Court has carefully considered in accordance with the *de novo* standard prescribed by Rule 72 (b) of the Federal Rules of Civil Procedure. The Court's own review of the procedural history of this matter mirrors the Magistrate Judge's in every material respect. Moreover, the Court's legal analysis does not depart from that of the Magistrate Judge in any fashion that is pertinent to the objections asserted by Petitioner Klein. In short, the Court finds that Petitioner's objections are utterly without merit.

For that reason, Petitioner's objections are hereby **OVERRULED**. The Court **ADOPTS** the Report and Recommendation in its entirety. Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 53) is hereby **DENIED** with prejudice.

A certificate of appealability shall not issue with respect to the dismissal on procedural grounds of all claims for relief with the exceptions of grounds two, three, and fifteen because "jurists of reason would not find it debatable whether this Court is correct in its procedural ruling" as required under the first prong of the two-part standard enunciated in Slack v. McDaniel, 529 U.S. 473, 484-85 (2000), which is applicable to procedurally-barred claims. A certificate of appealability shall not issue with respect to Petitioner's grounds, two, three, and fifteen because Petitioner has failed to make a substantial showing of the denial of a constitutional right remediable in this federal habeas corpus proceeding. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Petitioner has not demonstrated that reasonable jurists could debate whether these claims should have been resolved in a different manner or that issues presented were "adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 323-24 (2003) (quoting Slack, 529 U.S. at 483-84 (in turn quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)).

This Court **CERTIFIES**, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this Order would not be taken in

good faith. Accordingly, Petitioner will not be granted leave to appeal *in forma pauperis*. See Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

/s/
Sandra S. Beckwith, Chief Judge
United States District Court